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BOOK REVIEWS.

HISTORY OF THE SHERMAN LAW. By Albert H. Walker, New York: The Equity Press, 1910, pp. xiii, 320.

Upon 312 pages of exceptionally clear exposition, the author of this work condenses the light relevant to the History of the Sherman Law, the Magna Charta among the statutes of the United States, as he calls it. During the last two years certainly no statute has been of such intense and general interest to the public, and of such vast importance to all the greatest financial combinations and consolidations existing in this country, as this remarkable statute, which for the first eleven years of its life attracted scarcely more than an academic attention, and as to the subjects for the control of which it was supposed to have been brought into existence, was almost a dead letter. During these eleven years it is not far from the exact fact to say that the law was effective only as against labor, which the public at large at least had not supposed to have been within its contemplation. Capital on the other hand, for the control of which it was generally supposed the law had been evolved, during all those years went on heaping up organizations plainly forbidden by this law, on a scale and to an extent never attempted in the world before the date when this law was passed for the express purpose of preventing such accumulations of capital in the hands, or under the control of, a few men.

Down to 1901 it might seem that the act had brought about the very opposite of that for which it had been designed, and this Mr. Walker makes extremely clear in his summary, in chapter seven, of the Sherman Law Prior to Roosevelt's Administration. Forty cases had then been tried under the act; eighteen between private parties, of which sixteen had failed. The only conspicuous success was an order committing to jail for contempt of court, a labor leader who had violated an order of the court to abstain from participating in a railroad strike. The other success was limited to a judgment of seven hundred and fifty dollars, and was unimportant. Eighteen cases were prosecuted by the United States, ten of which were successful. This might seem encouraging, but for the fact that four were labor strike cases, three combinations in the coal trade which, if we may judge from the consequences, have had not the slightest effect on the control of mining and marketing of coal; and two against railroad associations resulting only in leading the railroads to find a more effective way of accomplishing the same thing. The *Addyston Pipe* case, which seemed to be a signal government victory, really resulted only in a successful search by the lawyers for other forms of combination which still more effectively suppressed competition. All this is strongly brought out by the author in a few pages. Whether one thinks the Sherman Law an effective means to accomplish this end, or regards it as an ineffective obstacle which at best can only retard inevitable economic tendencies, the work of Mr. Walker in clearing away the endless confusion

and bringing into the clear the content, meaning and interpretation of the Sherman Act as it stood after twenty years and nearly a hundred adjudications, is an extremely valuable service. In these few pages he has preserved and clearly presented all that is important from the thousands of pages of arguments of counsel and decisions of the courts in all the cases adjudicated to September, 1910. He has treated of every case before the courts down to the beginning of Roosevelt's administration, and of the important cases since that time. It will add interest to many that he has taken the trouble to throw in many side lights, such as his description of the judges rendering the opinions and the lawyers appearing for the parties, and his reproduction, on page 252, of Justice Holmes' original definition of law, as "a statement of the circumstances in which the public force will be brought to bear upon men through the courts."

The plan of the book is simple. The inception of the bill in Congress, the objections to the reasons for its passage, the many amendments offered, the discussions of the purpose and meaning of the law and the various words in it, and its final re-moulding into what Mr. Walker regards as a masterpiece of statutory wording, are fully detailed. Following the statement in Mr. Hoar's autobiography, he gives to that Senator the credit for having written the final draft. Mr. Leupp, in a recent issue of the Outlook, has claimed this honor for Senator Edmunds, and Mr. Walker, in pamphlets, published since the issue of his book, and in a letter which has been made part of the Congressional Record, has pointed out that the main draft of the bill was due to Senator Edmunds, a few words of Section I to Senator Evarts, and the balance to Senators George, Hoar and Ingalls, their work being largely, however, an adaptation to the act in its final form of certain sections of the draft in the original Sherman Bill. Because of the part that Senator Sherman had in originating the law, and his leadership in advocating it, the author regards the work as substantially due to two great men, John Sherman and George F. Edmunds, and considers Senator Sherman's part throughout as sufficient to entitle him to have his name attached to the law.

After thus tracing the genesis and passage of the act, the book proceeds then to give, in separate chapters, its history during Harrison's administration, Cleveland's administration, McKinley's administration, Roosevelt's administration and Taft's administration, interjecting one chapter giving a summary of the history prior to Roosevelt's administration. He closes with two chapters; one summarizing the past judicial construction of the Sherman Law, and the other forecasting the decision of the Supreme Court on the Standard Oil and American Tobacco decisions. The results in the last two cases have justified his prediction that they would be decided in favor of the Government, but one may possibly be skeptical about believing that the decision is as favorable to the Government as appears on the face of the decisions. His account of Justice White's attitude makes perfectly natural the opinion of that Justice, as finally delivered, that the Sherman Law is to be interpreted in the light of reason.

Under the Sherman Act the courts have decreed the dissolution of the

Great Northern Securities Company, the Standard Oil Company and the American Tobacco Company, and no one can doubt that other decrees are to follow. And yet the question remains an open one whether anything effective will be accomplished. The Northern Securities Company was dissolved, but one master mind still directs and controls, even more effectively than would have been possible under that organization, all the railroads whose stocks were put into that holding company. Mr. Walker points out that this substitutes for a permanent holding company the temporary life of the controlling man, who is now very old, but it may be questioned whether the central control is limited to the life of this man. At all events, there is at the present day no real competition between those railroads, the Sherman Law to the contrary notwithstanding. In view of this, one may be pardoned for doubting that there will be any real competition between the constituent parts into which the Standard Oil Company and the American Tobacco Company have been ordered to be resolved. A great economic law has been discovered. It shows that competition is wasteful and ruinous, and combination and consolidation are effective. Competition is war. The competitors have decided to lay down their arms and declare peace. The Sherman Law directs them to tear up this peace protocol and to resume fighting. In so doing it is hardly a Magna Charta of industry even though it be a Magna Charta among statutes. Only the future can tell whether along present lines it will be possible to develop the economic strength of this country without putting into the hands of a few tyrannical and oppressive power over the many, or whether some other statute will finally take its place which will frankly recognize economic law, encourage combination and co-operation with all the saving thereby effected, and find a way of compelling a proper distribution between producers and consumers, between the industry and the public, of the savings and advantages of commercial peace. For the present at least, we are under the reign of the Sherman Law, and Mr. Walker's book is a valuable aid to understanding what this means, in so far as it is now known.

E. C. G.

THE LAW OF FRAUDULENT CONVEYANCES. By Melville Madison Bigelow, Dean of the Boston University Law School. Edited by Kent Knowlton of the Boston Bar. Boston: Little, Brown and Company, 1911, pp. lxix, 762.

This work, in one volume, is a revised edition of the second volume of Bigelow on Fraud. In the first volume of the original work Dean Bigelow dealt with the subject of Deceit, and in the second with Circumvention. In his preface to the new edition the editor states that "It has seemed best, in preparing a new edition, to separate the two subjects entirely, to issue the volume on Circumvention as an independent text-book, and to make this, as was virtually the former volume, a treatise on Fraudulent Conveyances."

The merits of Bigelow on Fraud are so well known that any comment